March 26 1872 14.
Dismissed for want of
Clerk

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~347.~~ 146

EDWARD PUGH, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

In preparation

FILED DECEMBER 7, 1870.

March 30 1872 —
Affirmed
Chief Justice

SUPREME COURT OF THE UNITED STATES.

No. 347.

EDWARD PUGH, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

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1 United States Court of Claims.

EDWARD PUGH
vs.
THE UNITED STATES. } 3475.

To the honorable the judges of the United States Court of Claims:

The petition of Edward Pugh, who resides in the parish of Assumption, and State of Louisiana, respectfully represents—

That he is a native-born citizen of the United States, and that he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

Your petitioner further shows that, for many years prior to October, 1862, your petitioner had been, and has ever since continued to be, owner of a sugar plantation in the parish of Assumption, in the State of Louisiana, where he resided; but in the said month and year, being in very feeble health, he was advised and ordered by his physician to procure a change of air, and to travel to reëstablish himself, and he accordingly left his plantation aforesaid, and went to Texas, where he remained, staying principally in the counties of Cherokee and Angelina, until November, 1865, when he returned to Louisiana.

Your petitioner further shows that, on his departure from Louisiana, as above stated, in October, 1862, he left his said plantation under the charge and management of Adrien Pothier, who continued to have charge thereof until the United States illegally, violently, and forcibly took possession of said plantation, against the consent of petitioner and his said agent, Adrien Pothier, whom they dispossessed, and continued to hold possession thereof until January, 1866, on the false and illegal pretext that the property was abandoned by the owner.

Your petitioner further shows that, when the United States took possession of his plantation, there existed upon it the following property, to wit:

2 20	mules, worth	$4,000
7	blooded brood mares, worth	1,750
10	colts, blooded stock, worth	1,500
2	blooded stallions, worth	1,000
14	milch cows, worth	840
18	head of beef cattle, worth	900
20	calves, worth	200
60	sheep, worth	240
40	goats, worth	120
30	hogs, worth	210
10,000	bushels of corn, worth	5,000
150	tons of hay, worth	3,000
20	double ploughs, worth	360
30	single ploughs, worth	180
2	doz. spades, worth	48
2	" shovels, worth	48
4	" axes, worth	92
5	" hoes, worth	60
1	saw-mill belt, worth	150
150	barrels molasses, worth	4,500
1	lot of house furniture, worth	1,000
1	buggy, worth	250

1 sulky, worth	250
300 empty hogsheads, worth	750
1 lot of cooper's tools, worth	60
150 hogsheads of sugar, (the growing sugar-crop of 1863)	15,000
Damages and destruction of buildings on the plantation during the occupancy	1,000
	$42,508

Making, in all, the sum of $42,508.

Your petitioner respectfully shows that all of the above property was destroyed, or taken and carried away, by the United States and those agents who were put in charge of the plantation, so that petitioner has been, and still remains, entirely deprived of them, and the United States have become liable in law to pay him the value thereof, to wit, the aforesaid sum of $42,508.

And your petitioner further shows that during the time the plantation aforesaid was in possession of the United States, as above described, it was rented out by the United States to persons who made large crops of sugar and molasses and other agricultural products thereon, the money value produced by which this petitioner does not know, and cannot accurately allege; but he believes the crops of said plantation were worth, in each of the years 1864 and 1865, $15,000, or $30,000 in all, which the United States is justly and legally liable to pay him.

Wherefore your petitioner prays, the premises considered, that, in the due and ordinary mode of proceeding, this petition may be notified to the officer duly authorized and appointed to represent the
3 interests and defend the cause of the United States in this honorable court, and that he be required to demur to or traverse this petition within the legal delays, and that after due proceedings shall have been had, there may be judgment in favor of your petitioner for the sum claimed in this petition, to wit, the sum of $72,508, with interest thereon from the 15th day of October, in the year 1862; and he prays for all such other aid, relief, remedy, and process as the nature of his case may require and law permit.

THOMAS J. DURANT,
Attorney for Petitioner.

DISTRICT OF COLUMBIA,
Washington County, ss:

Thomas J. Durant, being duly sworn, says that he holds a special power of attorney, in writing, from the above-named petitioner, who is now absent from this city, and in Louisiana; that no assignment of the claim set forth in the above petition, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said petitioner is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that all the facts stated in said petition are true.

THOMAS J. DURANT.

Sworn to and subscribed before me this 19th day of August, 1868.

DAVID R. SMITH,
Justice of the Peace.

4 In the Court of Claims, Dec. term, 1868.

EDWARD PUGH
vs.
THE UNITED STATES. } 3475.

The defendants, by their Attorney General, come and move the court to grant a rule against the claimant in the action requiring him to show cause why his petition, filed herein, should not be dismissed for the reason that this court has not jurisdiction to hear and determine the cause of action therein set forth.

T. LYLE DICKEY,
Ass't Att'y Gen'l.

Filed in clerk's office June 16, 1869.

5 In the Court of Claims.

EDWARD PUGH
vs.
THE UNITED STATES. } 3475.

And now, to wit, 14th of February, A. D. 1870, the court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant's petition be dismissed.

By the court.

A true copy of record.

6 In the Court of Claims.

EDWARD PUGH
vs.
THE UNITED STATES. } No. 3475.

To the honorable the judges of the United States Court of Claims:

The petition of the above-named Edward Pugh respectfully represents that he is informed there is an error to his prejudice in the judgment dismissing his petition, rendered on Monday, the fourteenth February, 1870, and that he desires to appeal therefrom.

Wherefore he prays to be allowed an appeal from the judgment aforesaid to the Supreme Court of the United States, returnable according to law.

THOMAS J. DURANT,
Att'y for E. Pugh.

Filed in clerk's office March 2, 1870.

EDWARD PUGH
vs.
THE UNITED STATES. } No. 3475.

Let the appeal, as prayed in this case, be allowed.

By the court.

MARCH 2, 1870.

7 In the Court of Claims.

EDWARD PUGH
vs.
THE UNITED STATES. } No. 3475.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for claimant for the allowance of an appeal, as filed in the clerk's office 2d March, 1870; and of the order of the court, March 2, 1870, allowing the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this sixth day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 347. Edward Pugh, appellant, vs. The United States. Court of Claims. Filed 7th December, 1870.

IN THE HONORABLE THE

Supreme Court of the United States.

DECEMBER TERM, 1870.

EDWARD PUGH
vs.
THE UNITED STATES. } *No.* 347.

Appeal from the Court of Claims.

Brief of Counsel of Appellant.

Abstract.

Edward Pugh, alleging himself to be a native and loyal citizen of the United States, who never in any way aided the rebellion, brought his suit on the 19th day of August, 1868, against the United States, to recover $72,508.

He avers that in October, 1862, he was, and for many years prior to that had been, the owner of a sugar plantation in the parish of Assumption, in the State of Louisiana, where he habitually resided; that in the said month of October, 1862, being in bad health, he was ordered by his physician to procure a change of air; that in consequence, he, Pugh, went to Texas, where he remained until November, 1865, when he returned to Louisiana.

He avers that, on his departure from Louisiana, he left his plantation in charge of Adrien Pothier, who kept it until the plantation was taken possession of by force and unlawfully by agents of the United States, who dispossess-

ed his agent, Pothier, and who held possession of it until January, 1866, on the false and illegal pretext that the property was abandoned by the owner.

He gives a list of the property that existed on the plantation at the time the United States took possession of it, amounting in the aggregate to $42,508, all of which, he avers, was destroyed or taken and carried away by the United States agents who were in charge.

He avers that his said plantation was rented out by the United States to persons who made large crops of sugar and molasses on it, the value of which he does not know, but which he believes to have been in each of the years 1864 and 1865, $15,000, or $30,000 in all.

See petition, Rec., pp. 1 and 2.

The Assistant Attorney filed in the Court of Claims a motion to dismiss the petition on the ground that the court had not jurisdiction to hear and determine the cause of action therein set forth.

See Rec., p. 3, top.

This motion was sustained by the court, and the petition dismissed.

See Rec., p. 3, middle.

From this judgment the petitioner appealed.

The case will be found reported in the fifth volume of the Reports of the Court of Claims, p. 113 *et seq.*

POINTS.

First. The motion to dismiss in the court below being in the nature of, and equivalent to, a demurrer, admitted all the material facts of the petition; the court below, then, erred in sustaining the objections of the counsel of the United States, for the petition shows a case where the United States have taken possession of the property of a

citizen, and having retained it in use for a certain time, restores it in a damaged condition; there was an implied contract to pay for the use, and restore it in as good condition as when taken.

See U. S. Court Amendment, Art. 5, *close*.

The Court of Claims has jurisdiction of claims founded on an implied contract with the Government.

See act of February 24, 1855, 10 Statutes at Large, p. 612.

The petition does not complain of "an appropriation" of property, but of an "impressment" for temporary use: the distinction between the two cases is obvious, and recognized by this court in the case of Russel, decided at the last term.

Second. The court below erred, because the Court of Claims has jurisdiction of "all claims founded upon any law of Congress."

The first section of the act of March 12, 1863, (12 Statutes at Large, p. 820,) authorized the Secretary of the Treasury to appoint special agents to receive and collect all "abandoned property," in any State designated as in insurrection by the President's proclamation.

The second and third sections of the act of July 2, 1864, (13 Statutes at Large, p. 376,) say: "Property, real or personal, shall be regarded as abandoned when the lawful owner thereof shall be voluntarily absent therefrom, and engaged, either in arms or otherwise, in aiding or encouraging the rebellion."

The petitioner was not absent assisting the rebellion; his plantation was, then, not abandoned, and was not in a situation to be taken possession of by the Treasury agent, who, though he believed in good faith he was acting lawfully, and was in the line of his duty, was nevertheless mistaken, and his principal, the United States, is

liable for the consequences of his act; and, at any rate, the claim of the petitioner is founded upon the laws of Congress just quoted, and was therefore within the jurisdiction of the court below.

Third. And further, the court below erred in declining jurisdiction, because the claim is for the rent and product of a plantation taken possession of as abandoned by the Treasury agent, and leased out for cultivation, and crops made upon it.

The second section of the act of July 2, 1864, (13 Statutes at Large, pp. 375-6,) says that the "said" Treasury "agents shall take charge of and lease, for periods not exceeding twelve months, the abandoned lands, houses, tenements," &c.

This the petitioner alleges was done, and that the rents, profits, and property have not been accounted for. The claim is for this reason also founded on an act of Congress, and such as the court has clearly jurisdiction to hear and determine.

Respectfully submitted.

THOMAS J. DURANT,
For Appellant.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

EDWARD PUGH, *Appellant*,
vs. } No. 146.
THE UNTED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

The only question in this case is that of jurisdiction. The act of July 4, 1864, (13 Stats. at Large, 381,) enacts, that the jurisdiction of the Court of Claims "shall not extend to or include any claim against the United States growing out of the destruction or appropriation of or damage to property by the army or navy engaged in the suppression of the rebellion from the commencement to the close thereof." The allegations of the petition are somewhat obscure, but construing them, as they must be, if ambiguous, against the pleader, the case would seem to fall within this statute, and therefore be one without the jurisdiction of the Court of Claims.

Filor *vs.* United States, 9 Wallace, 45.

This case is distinguishable from United States *vs.* Russell, decided at last term, because there the Court

of Claims found that the claimant's property was not "appropriated."

But if the case does not fall within the act of 1864, it is still not within the jurisdiction of the Court of Claims, because the allegations show at most only a tort committed by the agents of the Government, for which no suit can be brought in that court.

Gibbons *vs.* United States, 8 Wallace, 269, 274, *et seq.*

Perrin *vs.* United States, decided at last term.

United States *vs.* Kimball, decided at present term.

The petition contains no allegations which would justify the court in treating the case as one raising an implied promise on the part of the Government to pay for the property taken, and thus bring it within Mitchell *vs.* Harmony, 13 How., 115, and United States *vs.* Russell, *ubi supra.*

C. H. HILL,
Assistant Attorney General.